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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

DESSIDE HOLDINGS LIMITED,

Petitioner,

vs.

MEGAWINE, INC., VADIM L.
TOMCHIN, NATALIA LUKINA,
GRANDPOINT BANK, and CITY
NATIONAL BANK,

Respondents.

Case No. 13-cv-08211-JAK-JCG

**ORDER GRANTING DESSIDE
HOLDINGS LIMITED'S
APPLICATION FOR WARRANTS
FOR ARREST OF VADIM
TOMCHIN AND NATALIA
LUKINA**

I. PROCEDURAL HISTORY

This matter is before the Court on Petitioner Desside Holdings Limited's ("Desside") Notice of Vadim Tomchin's and Natalia Lukina's Failure to Purge Their Contempt [Dkt. No. 41] (the "Notice").

On February 27, 2014, upon Tomchin's and Lukina's failure to appear for depositions subpoenaed pursuant to this Court's order, Desside filed an Ex Parte Application to Compel.¹ This Court granted the Application to Compel on March 11, 2014.² In so doing, this Court ordered, "Vadim Tomchin and Natalia Lukina SHALL comply with the subpoenas served on them by Desside **on or before April 8, 2014.**"³ The Court also ruled that, in the event Tomchin and Lukina fail to appear for their depositions, the Court may treat this act as "contempt of court" under Fed. R. Civ. P. 37(b)(1).

Once again, Tomchin and Lukina failed to comply.⁴ Desside then filed an Ex Parte Application For An Order To Show Cause Why Vadim Tomchin And Natalia Lukina Should Not Be Found In Contempt For Refusal To Comply With This Court's Order Compelling Compliance With Subpoenas Served Pursuant To This Court's Order (the "Ex Parte").⁵

This Court granted the Ex Parte and entered an Order to Show Cause on April 21, 2014.⁶ In the Order to Show Cause, this Court found Tomchin's and Lukina's

¹Notice of Ex Parte Application and Ex Parte Application for an Order to Show Cause Why Vadim Tomchin and Natalia Lukina Should Not Be Found in Contempt for Refusal to Comply with Subpoenas Served Pursuant to This Court's Order Or, In The Alternative, For an Order Compelling Compliance with the Subpoenas Pursuant to Fed. R. Civ. P. 37 (Dkt. Nos. 29-32) (the "Application to Compel").

² (In Chambers) Order Granting Ex Parte Application To Compel Depositions Of Tomchin And Lukina (Dkt. No. 33) (the "Order Granting Application to Compel")

³*Id.* (emphasis in original).

⁴(In Chambers) Order Granting Ex Parte Application And Order To Show Cause Why Tomchin And Lukina Should Not Be Found In Contempt [Dkt. No. 36] (the "Order to Show Cause"), p. 1.

⁵Dkt. No. 34

⁶Order to Show Cause, p. 1.

1 noncompliance with the subpoenas to be “willful.”⁷ This is because, “Tomchin and
 2 Lukina received actual notice of the Court’s [Order Granting Application to
 3 Compel].”⁸ Desside “not only served the Court’s earlier Order at Tomchin and
 4 Lukina’s last known address, but also made several other attempts to serve them, all
 5 reasonably calculated to provide actual notice.”⁹

6 The Court scheduled a hearing for May 20, 2014 and required Tomchin and
 7 Lukina to “file a statement of cause, supported by a declaration under oath, to the
 8 Order to Show Cause, as well as their response to the facts stated in Desside’s ex
 9 parte application, **on or before May 6, 2014.**”¹⁰

10 Desside properly served the Order to Show Cause on Tomchin and Lukina
 11 pursuant to this Court’s instructions.¹¹ Nonetheless, Tomchin and Lukina disobeyed
 12 the Order to Show Cause and failed to file a statement of cause, or any document
 13 whatsoever, in response.¹² Tomchin and Lukina also failed to appear for the Order
 14 to Show Cause Hearing on May 20, 2014.¹³

15 Accordingly, on May 27, 2014, this Court ordered that Tomchin and Lukina
 16 be held in contempt of court. This Court found, “Tomchin and Lukina have failed
 17 and refused, and are failing and refusing, to obey and comply with this Court’s
 18 Orders regarding their discovery obligations and are in civil contempt of said
 19 decrees.”

21 ⁷*Id.*

22 ⁸*Id.*

23 ⁹*Id.*

24 ¹⁰*Id.* at 1-2.

25 ¹¹Order Re: Plaintiff’s Ex Parte Application For An Order To Show Cause Why Vadim
 26 Tomchin And Natalia Lukina Should Not Be Found In Contempt For Refusal To
 27 Comply With This Court’s Order Compelling Compliance With Subpoenas Served
 Pursuant To This Court’s Order [Dkt. No. 40] (the “Order”).

28 ¹²*Id.*

¹³*Id.*

1 The Order required that Tomchin and Lukina pay a sanction of \$250.00 per
2 day, per person, until they purged their contempt. The Order permitted Tomchin
3 and Lukina to purge their contempt by complying with subpoenas served upon them
4 and submitting to depositions. In the event that Tomchin and Lukina failed to purge
5 their contempt within thirty days of the Order, this Court permitted Desside to
6 request writs of body attachment, under which Tomchin and Lukina would be
7 incarcerated until they complied with this Court's Orders.

8 **II. FINDINGS OF FACT**

9 Upon consideration of the pleadings, papers, and records on file, the Court
10 makes the following findings of fact:

11 1. Desside properly served the Order on Tomchin and Lukina pursuant to
12 the Court's instructions.

13 2. Thirty days have passed since the Court issued the Order.

14 3. Tomchin and Lukina have disobeyed the Order and failed to purge their
15 contempt by complying with the subpoenas and submitting to depositions.

16 4. Tomchin and Lukina have failed to pay the Court-ordered sanctions of
17 \$250 per day, per person.

18 5. Pursuant to this Court's Order, the sanction began to accumulate on
19 Wednesday, June 4, 2014.

20 6. As of July 14, 2014, Tomchin owed \$10,000.00 in sanctions payable to
21 the treasury of this Court.¹⁴

22 7. As of July 14, 2014, Lukina owed \$10,000.00 in sanctions payable to
23 the treasury of this Court.¹⁵

24 8. Pursuant to this Court's Order, on June 30, 2014, Desside filed the
25 Notice requesting issuance of an arrest warrant for Tomchin and/or Lukina.

26
27 ¹⁴See Appendix A, p. 1.

28 ¹⁵See *id.*, p. 2

1 9. Tomchin and Lukina have had more than five months to comply with
2 the subpoenas served on them.

3 10. Tomchin and Lukina have actual knowledge of these proceedings, the
4 subpoenas, and the Court Orders.

5 11. Tomchin and Lukina have failed and refused, and are failing and
6 refusing, to obey and comply with this Court's Orders regarding their discovery
7 obligations and are in civil contempt of said decrees.

8 12. Tomchin and Lukina willfully disobeyed the subpoenas.

9 13. Tomchin and Lukina willfully disobeyed the Order Granting
10 Application to Compel.

11 14. Tomchin and Lukina willfully disobeyed the Order to Show Cause.

12 15. Tomchin and Lukina also willfully disobeyed the Order finding them in
13 contempt of court.

14 **III. CONCLUSIONS OF LAW**

15 1. Under Fed. R. Civ. P. 37(b)(1), "[i]f the court where the discovery is
16 taken orders a deponent to be sworn or to answer a question and the deponent fails
17 to obey, the failure may be treated as contempt of court."

18 2. This Court possesses inherent authority to remedy Tomchin's and
19 Lukina's contempt of court.¹⁶

20 3. Contempt can be characterized as criminal or civil.¹⁷

21 4. Criminal contempt calls for punishment; civil contempt calls for a
22 remedy designed to compensate the injured party or to coerce the contemnor to
23 purge his or her contempt.¹⁸ The critical element that distinguishes civil from
24 criminal contempt is that the contemnors must carry "the keys of their prison in their
25 own pockets."¹⁹

26 ¹⁶*Spallone v. United States*, 493 U.S. 265, 275 (1990).

27 ¹⁷*See Koninklijke Philips Electronics N.V. v. KXD Technology, Inc.*, 539 F.3d 1039,
1042 (9th Cir. 2008).

28 ¹⁸*Id.*

1 5. The Court may order the contemnor jailed until he or she purges his or
2 her contempt by complying with the Court's order.²⁰

3 6. The Court, however, must take into account the contemnor's ability to
4 comply with the Court's order.

5 7. This Court may issue a writ of body attachment for a party's failure to
6 appear for a court-ordered deposition.²¹

7 8. In the Ninth Circuit, writs of body attachment may be issued
8 authorizing the arrest of a person where that person is responsible for the failure to
9 comply with a court order.²²

10 9. Tomchin and Lukina have failed to purge their contempt.

11 10. Based upon the foregoing findings that Tomchin and Lukina willfully
12 disobeyed the subpoenas served on them, the Order Granting Application to
13 Compel, the Order to Show Cause, and the Order, this Court concludes that
14 additional monetary penalties are unlikely to be effective in compelling Tomchin
15 and Lukina to comply with this Court's Orders.

16 11. The issuance of writs of body attachment is the least coercive remedy
17 remaining.

18 **IV. ORDER**

19 On the foregoing findings of fact, conclusions of law, and good cause
20 appearing:

21 **IT IS HEREBY ORDERED** that Desside's request for issuance of warrants
22 of arrest for Tomchin and Lukina is GRANTED;

23 ¹⁹*Shillitani v. United States*, 384 U.S. 364, 368 (1966).

24 ²⁰*S.E.C. v. Elmas Trading Corp.*, 824 F. 2d 732 (9th Cir. 1987) (affirming continued
25 incarceration of individual who failed to produce records required by the court).

26 ²¹*See Gaulden v. City of Desloge, Mo.*, 4:07CV01637 ERW, 2009 WL 690157 (E.D.
27 Mo. Mar. 12, 2009) (ordering the issuance of a writ of body attachment in the event the
28 defendant failed to appear for a deposition, after defendant failed to appear for his first
scheduled deposition, second scheduled deposition, and hearing to show cause.)

²²*N.L.R.B. v. Goodsell & Vocke, Inc.*, 645 F.2d 680, 681 (9th Cir. 1981).

1 **IT IS FURTHER ORDERED** that the attached warrants shall be issued
2 immediately for the arrests of Tomchin and Lukina for their failure to obey the
3 Order. The warrants for arrests for Tomchin and Lukina provide that any United
4 States Marshal, or any person authorized by the federal government including (but
5 not limited to) U.S. Customs and Border Control or the U.S. Immigration and
6 Customs Enforcement to arrest and incarcerate a person pursuant to any lawfully
7 issued arrest warrant, shall have the authority to arrest Tomchin and Lukina and
8 incarcerate Tomchin and Lukina at the nearest federal detention center;

9 **IT IS FURTHER ORDERED** that Tomchin and Lukina shall be brought
10 forthwith before this Court to determine whether they will purge themselves of this
11 contemptuous conduct by paying the civil fines imposed by the Order and by
12 complying with the Order;

13 **IT IS FURTHER ORDERED** that the United States Marshal or other
14 arresting officer shall notify the Court and Petitioner's attorney of the fact of the
15 arrests of Tomchin and Lukina; and

16 **IT IS FURTHER ORDERED** that Tomchin and Lukina shall be detained in
17 custody until they are discharged by the Court.

18
19 DATE: July 21, 2014__


United States Magistrate Judge

20
21 Submitted by:

22 **BUCKLEYSANDLER LLP**

23 /s/ Fredrick S. Levin

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